In the Supreme Court of the United States

October Term, 19[illegible]

[illegible] Petitioner,

v.

United States, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the [illegible] Circuit

Declaration of the Hon. [illegible]

Brief for Petitioner

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-598

FRANCIS G. MANTZARIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Southern District of New York, petitioner, an attorney specializing in immigration matters, was convicted of four counts of having conspired to impede the administration of the immigration laws of the United States, in violation of 18 U.S.C. 371, four counts of having willfully procured or aided the making of false statements to the Immigration and Naturalization Service regarding sham marriages, in violation of 18 U.S.C. 1001, and one count of having endeavored to influence a witness in a proceeding before the Immigration and Naturalization Service, in violation of 18 U.S.C. 1505. He was sentenced to con-

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current suspended terms of imprisonment for one year, placed on probation for two years and fined a total of $25,000. The court of appeals affirmed *per curiam* (Pet. App. A).

The evidence at trial showed that petitioner was the central figure in various schemes to arrange fraudulent marriages so that aliens who had gained temporary admission to this country could remain as permanent residents. In addition to introducing evidence with respect to the four fraudulent marriages recited in the indictment, the government also introduced evidence with respect to four additional marriages in order to establish knowledge, common design and intent. In particular, the evidence showed that petitioner, with the assistance of others (frequently women who had previously participated in the scheme) would find women willing to enter into the fraudulent marriages (App. 83, 346–347, 373, 414, 639–640).[1] Part of the arrangement was that the parties would not live together as man and wife (App. 288, 306, 325, 352, 369–371, 378, 424, 438). Petitioner would coach the parties before they were interviewed by immigration officials for the purpose of contriving fictitious accounts as to how the parties had met and become engaged (App. 304–305, 405–407, 438–439, 441–442, 448–449, 456–457). The woman would be paid a substantial sum at the time of the marriage ceremony, a similar sum when petitioner's client received the desired papers from the Immigration and Naturaliza-

[1] "App." refers to the appendix in the court of appeals, which the government is lodging with the clerk of the Court.

tion Service, and any expenses incurred in obtaining a divorce (App. 86–87, 90–92, 281–284, 310, 312–313, 328, 333, 402, 404, 412, 433). Petitioner would advise the women on how to conduct themselves if the good faith of their marriages was officially questioned (App. 290–293, 308–309).

1. Although petitioner requested no special findings of fact, as was his right under Rule 23(c), Fed.R. Crim.P., he argues that the court must have based its general finding of guilt on constructive, rather than on actual, knowledge that the marriages of his clients were fraudulent. This contention is grounded on certain questions (see Pet. 9–10) put by the court to petitioner with respect to his claim that he had relied upon the representations of his clients that the marriages in question were valid. The court asked petitioner, for example, about his failure to follow up on information that a fake address had been given in connection with one of the marriages (App. 627–629). These questions were properly directed to test the truthfulness of petitioner's claim. But they do not, standing alone, indicate that the judge disbelieved the numerous witnesses who testified that petitioner had engineered the marriages, hired the women who participated in them, and fabricated the stories that were thereafter given to the Immigration and Naturalization Service in an effort to establish the good faith of the parties. There is thus no basis in the record for believing—as petitioner asserts—that the judge convicted him solely because he should have known of the falsity of the representations that the marriages were valid.

2. The court properly admitted evidence of petitioner's similar acts with respect to other sham marriages not charged in the indictment to prove his knowledge, intent and design. Contrary to petitioner's contention (Pet. 13–14), this proof was proper even before petitioner challenged the sufficiency of the evidence as to his intent. See *United States* v. *Freedman*, 445 F. 2d 1220, 1224 (C.A. 2).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

NOVEMBER 1971.

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